

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Kim	Team: Squad #06	CCRB Case #: 202104006	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/05/2021 12:55 AM	Location of Incident: 3rd Avenue and Bay Ridge Parkway	18 Mo. SOL 1/5/2023	Precinct: 68		
Date/Time CV Reported Tue, 07/06/2021 1:56 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/06/2021 1:56 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Manuel Martinez	03482	955136	068 PCT
2. POM Vitali Melnikau	20857	963160	068 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Schneller	17969	970195	068 PCT
2. POF Suman Khanna	25658	962524	068 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Manuel Martinez	Force: Police Officer Manuel Martinez used physical force against § 87(2)(b)	
B . POM Vitali Melnikau	Discourtesy: Police Officer Vitali Melnikau spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On July 6, 2022, § 87(2)(b) submitted this complaint via the CCRB Online Complaint Form on behalf of § 87(2)(b).

On July 5, 2021, at approximately 12:55 a.m., at the intersection of Bay Ridge Parkway and 3<sup>rd</sup> Avenue in Brooklyn, a marked police vehicle approached the intersection. Police Officer Vitali Melnikau and Police Officer Manuel Martinez of the 68<sup>th</sup> Precinct, used the vehicle intercom to tell § 87(2)(b) to get off the street. § 87(2)(b) stated that he was not going anywhere and refused to move. PO Melnikau and PO Martinez exited the vehicle. PO Martinez walked toward § 87(2)(b) and pushed him to the ground (**Allegation A: Force**, § 87(2)(g)). PO Melnikau walked up to § 87(2)(b) who was on the ground and said, “fucking out of here” (**Allegation B: Discourtesy**, § 87(2)(g)). § 87(2)(b) stood up and walked away. The officers left the location. § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

Cellphone video was obtained of this incident. The officers improperly did not turn on BWC (see OPMN).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Manuel Martinez used physical force against § 87(2)(b).**

**Allegation (B) Discourtesy: Police Officer Vitali Melnikau spoke discourteously to § 87(2)(b).**

§ 87(2)(b) testified (**BR 02**) that he was walking past Catrina’s, located on 3<sup>rd</sup> Avenue between 73<sup>rd</sup> and 74<sup>th</sup> Street in Brooklyn in the southbound direction with two of his friends, when he observed § 87(2)(b) walking in the middle of the road along 3<sup>rd</sup> Avenue, against traffic. § 87(2)(b) appeared to be intoxicated in that he was wobbly and did not walk straight. The street was not busy, but vehicles did pass in both directions, as 3<sup>rd</sup> Avenue is a two-way street. A group of six to seven male and female officers approached § 87(2)(b) to instruct him to get out of the street. § 87(2)(b) did not comply with the officers’ orders, and the officers did not prevent him from walking away. As § 87(2)(b) walked down the street, § 87(2)(b) and his friends followed from a distance on the sidewalk across the street. As they approached the intersection of Bay Ridge Parkway and 3<sup>rd</sup> Avenue, § 87(2)(b) got into a verbal dispute with two individuals inside a white vehicle that was parked on Bay Ridge Parkway near the Starbucks at the intersection. § 87(2)(b) did not know why this dispute began, but it seemed like § 87(2)(b) wanted to fight the individuals in the parked vehicle. The two individuals came out of the vehicle, but the dispute stayed verbal. § 87(2)(b) walked back toward the middle of the intersection. Approximately one minute later, a marked police vehicle approached the intersection. § 87(2)(b) attention was now focused on the police vehicle, and he gestured widely at the officers, pointing his middle finger at them, and tapping lightly on the hood of their car, which did not cause loud noise or damage. PO Melnikau and PO Martinez used the vehicle speaker system to tell § 87(2)(b) to get off the street three times in quick succession. § 87(2)(b) stated that he was not going anywhere and refused to move. § 87(2)(b) was not sure if the police vehicle windows were open or if the officers could hear these statements. Approximately 15 seconds later, PO Melnikau and PO Martinez exited the vehicle. PO Martinez walked toward § 87(2)(b) and within three seconds, he “football tackled” § 87(2)(b) to the ground. § 87(2)(b) did not directly observe the tackle as his attention was diverted away, but the thud caused § 87(2)(b) to look again, and § 87(2)(b) was on the ground, lying flat on his back. After § 87(2)(b) fell to the ground, PO Melnikau walked up and

said something to § 87(2)(b) using the word, “fuck,” but § 87(2)(b) did not know what the full statement was. § 87(2)(b) stood up and continued to walk, though now on the sidewalk. No further police action was taken. PO Melnikau and PO Martinez returned to their vehicle and drove away. After the incident, § 87(2)(b) observed a bloody scrape along § 87(2)(b) forearm.

At the 0:06 mark in cellphone video filmed by § 87(2)(b) friend, and provided to the CCRB by § 87(2)(b) (BR 01), PO Melnikau exits the driver's side of the marked vehicle as § 87(2)(b) approaches the passenger's side. At the 0:15 mark, PO Martinez exits the marked vehicle from the passenger's side and § 87(2)(b) walks toward an unidentified white male wearing a black t-shirt. At the 0:17 mark, PO Martinez gets a running start for approximately 5-10 feet, and with one or both hands, he makes contact with § 87(2)(b) right upper arm and possibly his chest, shoving him so that he gets lifted from the ground through the momentum and falls to the ground on his left side. PO Melnikau walks up to § 87(2)(b) and yells, “Fucking outta here.” At the 0:30 mark, § 87(2)(b) stands up.

A statement was not obtained from § 87(2)(b) because he was unavailable.

PO Martinez testified (BR 03) that he was on “bar patrol” for July 4<sup>th</sup>, PO Melnikau was driving their police vehicle northbound on 3<sup>rd</sup> Avenue. PO Martinez observed § 87(2)(b) standing in the middle of the street, blocking traffic, arguing with approximately three individuals and acting “belligerently.” PO Martinez did not remember if he had any conversation with PO Melnikau as they approached § 87(2)(b). The police vehicle windows were open, so PO Martinez was able to hear people arguing and yelling, as if they were about to fight, but he could not hear what was being said, specifically. § 87(2)(b) tried to start a fight with the individuals. § 87(2)(b) was not physical with the individuals, but his general body language was aggressive, and he appeared drunk based on his body language. PO Melnikau beeped his horn and PO Martinez told § 87(2)(b) to get out of the street through his open window. PO Martinez told § 87(2)(b) to get out of the street again, for a total of three to four times. PO Martinez did not remember if § 87(2)(b) seemed to hear his commands. § 87(2)(b) did not get out of the street and turned his attention to the officers and seemed upset at being told to get out of the street. PO Martinez did not remember if § 87(2)(b) said or did anything specific to the officers. PO Martinez did not remember if he or PO Melnikau used the loudspeaker to tell § 87(2)(b) to get out of the street, but they may have. After approximately one minute of ordering § 87(2)(b) to get out of the street, PO Martinez and PO Melnikau both exited the vehicle to tell § 87(2)(b) to get out of the street again. PO Martinez had not activated his BWC because the incident happened so quickly, and his intention was to de-escalate the situation. § 87(2)(b) walked toward the individual he was arguing with. § 87(2)(b) was verbally and physically aggressive. PO Martinez did not remember what § 87(2)(b) and the individual said to each other. PO Martinez pushed § 87(2)(b) once from the front with both hands, and § 87(2)(b) fell to the ground. PO Martinez made contact with § 87(2)(b) arm and shoulder area. The purpose of the push was to get § 87(2)(b) out of the street and to prevent him from picking a fight with the individuals. PO Martinez did not remember how § 87(2)(b) fell to the ground. When PO Martinez was physically close to § 87(2)(b) he could smell the alcohol from him. PO Melnikau asked § 87(2)(b) if he needed medical attention and he said no and got up. PO Martinez did not remember if PO Melnikau said anything else, or used any profanity. PO Martinez did not remember if he used any profanity. PO Martinez did not see any wounds or injuries on § 87(2)(b) body. PO Martinez did not have § 87(2)(b) removed to the hospital at this point because he thought § 87(2)(b) would just go home. PO Melnikau and PO Martinez resumed bar patrol, when they saw § 87(2)(b) in the middle of the street again approximately five minutes later, near 77<sup>th</sup> Street. PO Martinez and PO Melnikau decided that § 87(2)(b) needed to go to the hospital because he was too drunk. EMS arrived and said that § 87(2)(b) was intoxicated with dilated pupils and



appeared to be on drugs. § 87(2)(b) was transported to the hospital with another officer escorting him. The removal to hospital was not due to the push.

PO Melnikau testified (BR 04) that he initially observed § 87(2)(b) standing in the middle of the intersection approximately five to 10 feet away from his police vehicle, heavily intoxicated, yelling and cursing at another individual. The individual was approximately 20 feet away, by the northeast corner. The individual was also on the street and may have been blocking traffic as well. PO Melnikau did not remember if his windows were open, but he could hear yelling and screaming. PO Melnikau did not remember if he heard any specific words said by § 87(2)(b). The individual was not as aggressive as § 87(2)(b) and was relatively calm. PO Melnikau and PO Martinez attempted to get § 87(2)(b) to move out of the way by flashing their lights and sirens. § 87(2)(b) noncompliance, aggression, gesturing with his middle finger, cursing, and general demeanor caused PO Melnikau to believe that he was inebriated at this point. § 87(2)(b) was also unsteady on his feet. PO Martinez may have used the loudspeaker to get § 87(2)(b) out of the street. PO Melnikau and PO Martinez gestured from inside the car to indicate to § 87(2)(b) to move. § 87(2)(b) refused to move in that he stood in front of PO Melnikau and PO Martinez's vehicle, cursing at them and gesturing with his middle finger. PO Melnikau did not remember specifically what § 87(2)(b) said when he yelled at them, but he used profanity. PO Melnikau was unable to tell why § 87(2)(b) and the individual were in an altercation. § 87(2)(b) began walking toward the third individual as if wanting to start a fight. § 87(2)(b) seemed violent in the way he approached the officers' vehicle earlier, and the way he waved his arms as he yelled. § 87(2)(b) did not strike the police vehicle or any individuals. PO Melnikau did not remember how many commands he and PO Martinez gave to § 87(2)(b) before exiting the vehicle. Approximately one minute after pulling up to the intersection, PO Melnikau and PO Martinez exited the vehicle at that point to prevent a fight from starting. PO Melnikau and PO Martinez did not have any conversation about what they were going to do before they exited the vehicle. PO Melnikau did not remember if he said anything else to § 87(2)(b) before PO Martinez pushed § 87(2)(b). § 87(2)(b) was approximately 15 to 20 feet away from the other individual when PO Martinez pushed § 87(2)(b) who then fell to the ground. PO Melnikau asked § 87(2)(b) what was wrong with him and asked if he needed medical attention. § 87(2)(b) "did not look like he wanted anything to do with" PO Melnikau and PO Martinez. PO Melnikau did not remember if § 87(2)(b) responded that he did not want medical attention. § 87(2)(b) then got up. PO Melnikau did not observe any wounds or visible injuries on § 87(2)(b) body. After viewing the cellphone video, PO Melnikau acknowledged using the phrase, "fucking out of here," because it was a high-intensity incident and § 87(2)(b) was acting intimidating toward the other individual.

Threat, Resistance, Injury Report § 87(2)(b) (BR 05) was generated as a pick-up due to use of force by MOS (hand strike). The MOS involved has been identified as PO Manuel Martinez. BWC marked no. Details of incident as follows: PO Martinez observed an irate intoxicated male, § 87(2)(b) exhibiting disorderly behavior in the middle of the street, narrowly avoiding being struck by vehicles. PO Martinez ordered § 87(2)(b) onto the sidewalk numerous times to no effect. § 87(2)(b) further wanted to physically fight members of the public in the near vicinity. PO Martinez physically guided § 87(2)(b) onto the sidewalk, and male then fell to the ground in the process, claiming no injuries. § 87(2)(b) was removed to § 87(2)(b) for further medical treatment. PO Vitali Melnikau was also present for the incident. TRI Report § 87(2)(b) (BR 06) additionally notes that medical attention was offered and accepted. He was removed due to pre-existing injury/illness (EDP). AIDED § 87(2)(b) (BR 07) was prepared for § 87(2)(b) § 87(2)(b) removal to § 87(2)(b) on July 5, 2021. The details are consistent with the TRI. EMS deemed § 87(2)(b) to be under the influence of drugs.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy, Patrol Guide Procedure 221-01 (BR 08).

The Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect, while efficiently rendering police services and enforcing the laws impartially, by fighting crime both through deterrence and the relentless pursuit of criminals, Patrol Guide Procedure 200-02 (BR 09).

It is undisputed that § 87(2)(b) was intoxicated and walking in the street, blocking traffic, and engaging in a verbal dispute with another individual. It is also undisputed that PO Martinez and PO Melnikau ordered § 87(2)(b) to get out of the street several times before they exited their vehicle. PO Martinez acknowledged that he pushed § 87(2)(b) because § 87(2)(b) refused to move out of the street and was approaching another individual as if wanting to fight. Although § 87(2)(b) also stated that § 87(2)(b) appeared to want to fight the individual, PO Melnikau and PO Martinez stated that § 87(2)(b) did not make any physical contact with the individual. PO Melnikau further stated that § 87(2)(b) was approximately 15 to 20 feet away from the individual when PO Martinez pushed him. The video also corroborates that § 87(2)(b) was a distance away from the individual. Given § 87(2)(b) intoxicated state, which § 87(2)(b) and PO Melnikau stated caused him to be unsteady on his feet, § 87(2)(g)

§ 87(2)(b) However, the video shows that as soon as PO Martinez exited his vehicle, he approached § 87(2)(b) and pushed him without additional attempts to de-escalate the situation. § 87(2)(g)

PO Melnikau acknowledged using the phrase, “fucking out of here,” because of the intensity of the incident and § 87(2)(b) high level of aggression toward the other individual. This phrase is also captured in the cellphone video. However, this was after § 87(2)(b) fell to the ground as a result of being pushed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 10).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 11).
- PO Melnikau has been a member of service for five years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. CCRB Case #202100305 is pending investigation. § 87(2)(g)
- PO Martinez has been a member of service for eight years and has been a subject in four CCRB complaints and 11 allegations, of which one was substantiated.:
  - Case #20190780 involved a substantiated allegation of force against PO Martinez. The Board recommended command discipline B and the NYPD imposed no penalty.

#### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of March 8, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 12).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 6

Investigator:	<u>Lily Kim</u>	<u>Investigator Lily Kim</u>	<u>5/24/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Jessica Peña</u>	<u>IM Jessica Pena</u>	<u>7/12/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date